IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

Bail Appl..No. 5909 of 2007()

CRIME NO.703/07 OF PATHANAMTHITTA POLICE STATION

: PETITIONERS/ACCUSED

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1. ANIL @ SUNIL, AGED 34 YEARS,
S/O.NADARAJAN, SUNITHALAYAM BHAVAN,
ULAVAKKAD MURI, PALAMMEL VILLAGE,
PATHANAMTHITTA DISTRICT.

2. GOPALAKRISHNAN NAIR, AGED 39 YEARS,
S/O.JANARDHANAN NAIR, VANPILAVIL HOUSE,
PRAMADAM VILLAGE, PATHANAMTHITTA DISTRICT.

BY ADV. SRI.C.C.THOMAS

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
SUB INSPECTOR OF POLICE, PATHANAMTHITTA POLICE
STATION, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 01/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5909 of 2007

Dated this the 1st day of October, 2007

ORDER

Application for regular bail. Petitioners are accused 5 and 6 in a crime registered under Section 57(a) of the Kerala Abkari Act. The crux or gist of the allegations therein is that the petitioners are salesmen under licencees in a licenced toddy shop. Toddy that was sold in the toddy shop by the petitioners violated the provisions of Section 57(a) of the Kerala Abkari Act in as much as the detecting police officials came to the conclusion that it was toddy mixed with spirit. No spirit or container of spirit was recovered. The learned counsel for the petitioners submits that the inference that the toddy was mixed with arrack is premature and unjustified. The learned counsel for the petitioners points out that Rule 8 (3) of the Kerala Abkari Shops Disposal Rules, 2002 obliges the authorities to wait for the report of the Chemical Examiner before any crime is registered. The learned counsel for the petitioners submits that there is absolutely nothing except the inference of the detecting police officials to come to a conclusion that the toddy that was sold had any foreign ingredient to enhance the intoxicating quality of the toddy. It is, in these circumstances, prayed that the petitioners, who have been in custody from 18.09.07, may be released on bail.

2. The learned Public Prosecutor opposes the application. It is not necessary for me to consider the larger question whether such a

sample can be drawn or not. I am satisfied, under any circumstances, that the petitioners, who have been continuing in custody from 18.09.07 can now be released on bail subject to appropriate terms and conditions. In coming to this conclusion, I take particular note of the fact that there is no allegation even that spirit or arrack or any other foreign ingredient was found available separately in the premises. There is not even an allegation that any container, in which such spirit/arrack was kept earlier, was also available in the premises. I am, in these circumstances, satisfied that the petitioners can be granted regular bail subject to appropriate terms and conditions.

3. In the result, this application is allowed. The petitioners shall be released on bail on the following terms and conditions.

i) The petitioners shall execute a bond for Rs.1,00,000/- (Rupees One lakh only) each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

ii) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m and 12 noon on all Mondays and Fridays for a period of three months and thereafter as and when directed by the Investigating Officer in writing to do so.

(R.BASANT, JUDGE)

rtr/-